

BLUMENTHAL, NORDREHAUG & BHOWMIK
Norman B. Blumenthal (SBN 068687)
Kyle R. Nordrehaug (SBN 205975)
Aparajit Bhowmik (SBN 248066)
Molly A. DeSario (SBN 230763)
Piya Mukherjee (SBN 274217)
2255 Calle Clara
La Jolla, California 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-21232

Attorneys for Plaintiffs

SEYFARTH SHAW LLP
Andrew M. McNaught (SBN 209093)
amcnaught@seyfarth.com
Michael A. Wahlander (SBN 260781)
mwahlander@seyfarth.com
Duwayne A. Carr (SBN 299136)
dacarr@seyfarth.com
560 Mission Street, 31st Floor
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

Attorneys for Defendant
RANDSTAD US, L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCUS BETORINA, JOSEPH DIAZ, and
FRED BELL, individuals on behalf of themselves
and on behalf of all persons similarly situated,

Plaintiffs,

v.

RANDSTAD US, L.P., a Limited Partnership; and
Does 1 through 50, inclusive,

Defendant.

Case No. 3:15-CV-03646-EMC

**STIPULATION AND [PROPOSED]
ORDER RE: CLASS NOTICE, CLAIM
FORM AND FINAL APPROVAL
HEARING DATE**

Judge: Hon. Edward M. Chen
Dept.: Ctrm. 5

Plaintiffs Marcus Betorina, Joseph Diaz, and Fred Bell ("Plaintiffs") and Defendant Randstad US, L.P. ("Randstad") (collectively "the Parties"), by and through their respective counsel, stipulate as follows:

1 1. On April 6, 2017, the Court entered an order granting preliminary approval of the Parties'
2 proposed Settlement Agreement [Doc. No. 38].

3 2. As part of that order, the Court ordered the Parties to file an amended Class Notice and
4 Claim Form with certain revisions.

5 3. The Parties have made the ordered revisions to the Class Notice and Claim Form and the
6 revised Class Notice and Claim Form are attached hereto as Exhibit A, which are now submitted for the
7 Court's approval.

8 4. The Parties also request that the Court set the Final Approval Hearing for a date on or
9 after August 3, 2017, which date shall be included in the Class Notice.

10 **IT IS SO STIPULATED.**

11 DATED: April 14, 2017

Respectfully submitted,

12 BLUMENTHAL, NORDREHAUG &
13 BHOWMIK

14 BY: /s/ Kyle R. Nordrehaug
Kyle R. Nordrehaug

15 Attorneys for Plaintiff
16 MARCUS BETORINA, JOSEPH DIAZ and
FRED BELL

17 DATED: April 14, 2017

Respectfully submitted,

18 SEYFARTH SHAW LLP

19 BY: /s/ Michael A. Wahlander
20 Michael A. Wahlander

21 Attorneys for Defendant
22 RANDSTAD US, L.P.

23 **ATTESTATION PURSUANT TO LOCAL RULE 5-1(i)(3)**

24 I, Kyle Nordrehaug, attest that concurrence in the filing of this stipulation has been obtained
25 from the signatory, Michael Wahlander, counsel for Defendant.

26 DATED: April 14, 2017

27 By: /s/ Kyle Nordrehaug
28 Kyle Nordrehaug

1
2 **[PROPOSED ORDER]**

3 Pursuant to the Parties' stipulation and good cause appearing therefore, the Court orders as
4 follows:

5 The revised Class Notice and Claim Form attached to the stipulation as Exhibit A are approved.
6 The Final Approval Hearing is set for August 3, 2017 at 1:30 p.m.

7 **IT IS SO ORDERED.**

8 DATED: April 14, 2017

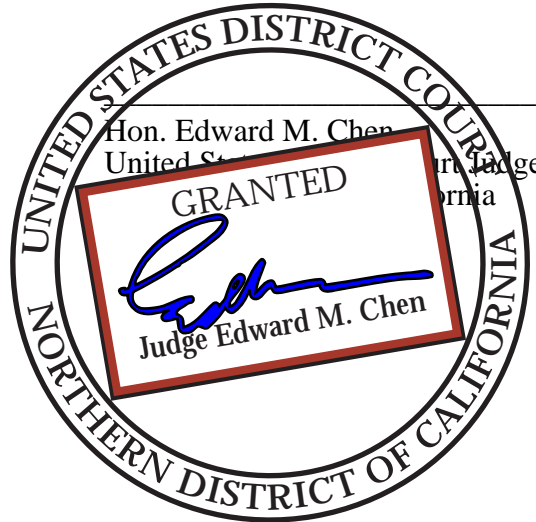


EXHIBIT “A”

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

*(Betorina, et al. v. Randstad US, L.P., U.S. District Court,
Northern District of California Case No. 3:15-CV-03646 EMC)*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Claim Form and Receive a Payment	<p>To get money from the settlement, you MUST timely submit a completed Claim Form. Your Claim Form accompanies this Notice.</p> <p>Your estimated Individual Settlement Share is stated on the accompanying Claim Form.</p> <p>In exchange for the settlement payment, you will release claims against the Defendant as detailed below.</p>
Exclude Yourself	<p>To exclude yourself, you must send a letter to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement.</p> <p>Instructions are set forth below.</p>
Object	<p>Write to the Court about why you do not like the settlement. If your object, you can still submit a Claim Form and receive a payment.</p> <p>Directions are provided below.</p>
Do Nothing	<p>If you do nothing, you will not receive money from the settlement. You will still release certain claims against the Defendant.</p>

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) in *Betorina, et al. v. Randstad US, L.P.*, Case No. 3:15-CV-03646 EMC, pending in the United States District Court for the Northern District of California (the “Court”) has been reached between Plaintiffs Marcus Betorina, Fred Bell, and Joseph Diaz (“Plaintiffs”) and Defendant Randstad US, L.P. (“Defendant”), and has been granted preliminary approval by the Court. **You may be entitled to receive money from this Settlement.**

You have received this Notice because you have been identified as a member of the Class, which is defined as:

All individuals who worked for Defendant Randstad US, L.P. as Security Guards who were placed out of Randstad business unit 14023, and classified as non-exempt employees, from February 13, 2011 to August 8, 2016.

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On February 13, 2015, Plaintiffs initially filed a class action lawsuit in the Superior Court for the County of Alameda, Case No. RG15758487, entitled *Betorina, et al v. Randstad US, L.P.* The complaint was subsequently amended on April 16, 2015. Defendant removed the lawsuit to the United States District Court for the Northern District of California on August 10, 2015 where the lawsuit has proceeded as Case No. 3:15-CV-03646 EMC (the “Action”).

On February 15, 2017, Plaintiffs attached the Second Amended Complaint to the pending motion for preliminary approval, which the Court recognized as the operative complaint in the Order dated April 6, 2017. In the Second Amended Complaint, Plaintiffs allege that Defendant violated wage and hour laws and seek, on each Plaintiff’s own behalf, and on behalf of the Class, meal and rest period premium pay, unpaid wages and interest thereon, penalties, liquidated damages, injunctive and other equitable relief, and reasonable attorneys’ fees and costs, under, *inter alia*, Title 8 of the California Code of Regulations, Business & Professions Code §§ 17200, *et seq.*, various Industrial Welfare Commission Wage Order(s), California Code of Civil Procedure §1021.5, and various provisions of the California Labor Code.

Defendant denies and disputes all such claims, and avers that its security guards were provided meal and rest breaks, were properly paid any premiums owed for missed meal and rest breaks, were properly paid all wages and overtime as due, were provided accurate wage statements, and paid all wages owed on termination. Defendant denies that it violated the law in any way. Defendant has and will assert numerous defenses to these claims. Nothing in this Notice, or the Settlement itself, or any actions to carry out the terms of the Settlement mean that the Defendant admits any fault, guilt, negligence, wrongdoing or liability whatsoever. The Court has made no findings regarding the above claims.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved Plaintiffs to serve as the Class Representatives, and the law firm Blumenthal, Nordrehaug & Bhowmik to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Fund. Defendant has agreed to pay an “all in” amount of Three Hundred Fifty Thousand Dollars (\$350,000) (the “Gross Settlement Fund”) to fund the settlement of this Action. The Gross Settlement Fund is comprised of a Net Settlement Fund for the Class, an award of attorney’s fees and costs, settlement administration expenses, a PAGA payment, and service awards to the Class Representatives. Defendant’s portion of payroll taxes shall remain the responsibility of Defendant.

Defendant shall fully fund the Gross Settlement Fund to the Settlement Administrator within fifteen (15) days of the Effective Date. The “Effective Date” is the date upon which Final approval of the Settlement Agreement is granted by the Court and the Court’s Judgment approving the Settlement becomes Final.

Amounts to be Paid From the Gross Settlement Fund. The Court has tentatively approved certain payments to be made from the Gross Settlement Fund as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Fund before settlement payments are made to Class Members who timely submit valid Claim Forms (“Qualified Claimants”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$19,000, for expenses, including expenses of notifying the Class of the Settlement, processing opt outs and claim forms, and distributing settlement payments.
- Attorneys’ Fees and Costs. Payment to Class Counsel of reasonable attorneys’ fees not to exceed \$87,500 (25% of the Gross Settlement Fund) for reasonable attorneys’ fees, and an additional amount to reimburse actual litigation costs billed to the Plaintiffs not to exceed \$10,000. Class Counsel has been prosecuting the

Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

- **Service Awards.** Service Awards of Ten Thousand Dollars (\$10,000.00) each to the Plaintiffs, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook. This payment is in addition to whatever payments the Plaintiffs are otherwise entitled to as a Class Member.
- **PAGA Payment.** A payment of \$3,500 relating to Plaintiffs' claim under the Private Attorney General's Act ("PAGA"), \$2,635 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$875 will be distributed to Class Members as part of the Net Settlement Fund.

Calculation of Payments to Qualified Claimants. After all the above payments of the court-approved Attorney's Fees and Costs, the Service Awards, the PAGA payment to the LWDA, and the employer's share of payroll taxes and Administration Costs are deducted from the Gross Settlement Fund, the remaining portion, the "Net Settlement Fund" shall be distributed to class members who submit a valid Claim Form ("Qualified Claimants"). Each Qualified Claimant shall be entitled to receive a pro rata portion of the Net Settlement Fund (his/her "Individual Settlement Share") calculated based upon the number of workweeks in which the member worked during the Settlement Period, divided by the total number of workweeks worked by all Settlement Class Members during said period.

You must submit a valid Claim Form to the Settlement Administrator by _____, 2017 to receive your Individual Settlement Share. Your Claim Form accompanies this Notice and must be fully completed and signed to be valid.

Tax Matters. Settlement payments to an Qualified Claimants will be designated as payment for and allocated as thirty-three percent (33%) of the Individual Settlement Share that is distributed to each Qualified Claimants will be considered wages, thirty-three percent (33%) will be considered interest, and thirty-four percent (34%) percent will be considered penalties. The employee portion of all applicable income and payroll taxes, as well as the taxes on the penalties and interest damages payment, will be the responsibility of the Class Members. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon the final approval by the Court of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, the Settlement Class Members release Defendant, its current or former subsidiaries, affiliates, owners, parents, predecessors, insurers, agents, employees, partners, successors, assigns, officers, officials, directors, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries ("Releasees"), of and from any and all claims, rights, demands, charges, complaint, causes of action, obligations or liability of any and every kind that were alleged in any version of any complaint filed in the Action or in the Second Amended Complaint which occurred during the Settlement Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, workers' compensation, and claims outside the Settlement Period, except that Settlement Class Members who do not submit signed Claim Forms will not release their claims under the Fair Labor Standards Act ("Released Class Claims").

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and the Releasees about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Your estimated Individual Settlement Share is stated on the accompanying Claim Form.

If you wish to challenge the information set forth in the Claim Form, then you must timely submit a signed and completed Claim Form and complete the dispute section of the Claim Form along with supporting documents to the Settlement Administrator at the address provided on the Claim Form postmarked no later than the stated deadline.

6. How can I get a payment?

To get money from the settlement, you MUST timely submit a completed Claim Form. Your Claim Form accompanies this Notice. If you are a Class Member and you submit a valid Claim Form **post-marked on or before [date]**, you will receive a settlement payment and will be bound by the settlement. The judgment will bind all members of the Class who do not request exclusion.

Class Members who submit a Claim Form and become Qualified Claimants will opt in to the FLSA claims and agree to the release of FLSA claims as outlined in the Claim Form. A check for your settlement payment will be mailed to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____ (800) _____.

The Court will hold a hearing on (date), 2017 to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a couple months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive no money from the Settlement, and you will not be bound by its terms.**

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____, 2017. The request to opt-out must state in substance: "I have read the Class Notice and I wish to opt-out of the class action and settlement of the case Betorina, et al. v. Randstad US, L.P., Case No. 3:15-CV-03646" The request to opt-out must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request to opt-out must be completed by you. No other person may opt-out for a member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, 2017, or are unsigned by an individual Class Member, will be rejected, and those Class Members will remain bound by the Settlement and the release described above. If you submit both a Claim Form and a request for exclusion, only the Claim Form will be accepted and the request for exclusion will be disregarded.

8. How do I tell the Court that I don't like the Settlement?

Any Class Member, who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and

whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Betorina v. Randstad*, in the United States District Court for the Northern District of California, Case No. 3:15-CV-03646 EMC.

The objections must be sent to the Settlement Administrator postmarked no later than _____, 2017. Objections to the Settlement must also be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Philip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California

To object to the Settlement, you must not opt out, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. **If you object, you must still submit a Claim Form in order to receive money from the Settlement.** Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The address for the Settlement Administrator is:

Betorina v. Randstad Settlement Administrator
c/o _____

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Blumenthal, Nordrehaug & Bhowmik
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: Norm@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Andrew M. McNaught
Michael A. Wahlander
SEYFARTH SHAW LLP
560 Mission Street, Suite 3100
San Francisco, CA 94105

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____, 2017, at the United States District Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102 in Courtroom 5 before Judge Edward M. Chen. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing. Class Members may make an appearance through an attorney. To speak at the hearing, you must submit a written request stating your intention to appear at the Final Approval Hearing to the Settlement Administrator postmarked no later than _____, 2017. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Betorina v. Randstad* Settlement

Administrator, c/o _____; or contact Class Counsel at 1-858-551-1223.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to Blumenthal, Nordrehaug & Bhowmik, 2255 Calle Clara, La Jolla, CA 92037 or by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Betorina v. Randstad*. You may also get more details by examining the Court's file using PACER at <http://www.cand.uscourts.gov/> and entering the Case No. 3:15-CV-03646.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California Department of Industrial Relations Unclaimed Wages Fund with, if possible, an identification of the Class Member who failed to cash the check. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

CLAIM FORM

*(Betorina, et al. v. Randstad US, L.P., U.S. District Court,
Northern District of California Case No. 3:15-CV-03646 EMC)*

**INSTRUCTIONS: TO RECEIVE A SETTLEMENT PAYMENT YOU MUST
COMPLETE, SIGN AND MAIL THIS PROOF OF CLAIM FORM**

**THE CLAIM FORM MUST BE POSTMARKED ON OR BEFORE _____,
2017 AND SENT TO: *BETRINA v. RANDSTAD* CLAIMS ADMINISTRATOR, C/O
_____, [mailing address].**

CLAIMANT INFORMATION (If your name or address is different from those shown
below, print the corrections on the lines to the right.)

«Barcode» Claim #: SSEC1-«Claim»-«CD»- «MailRec» Name / Mailing

Address Changes:

«FName» «LName» _____

«Addr1» «Addr2» _____

«City», «ST» «Zip» _____

«Social Security Number» _____

(_____) _____
Area Code

Home Telephone Number

**TO ALL PERSONS WHO WORKED FOR DEFENDANT RANDSTAD US, L.P. AS
SECURITY GUARDS WHO WERE PLACED OUT OF RANDSTAD BUSINESS UNIT
14023, AND CLASSIFIED AS NON-EXEMPT EMPLOYEES, FROM FEBRUARY 13,
2011 TO AUGUST 8, 2016 (“CLASS”):**

- A. The records of Randstad US, L.P. (“Defendant”) show that you were employed as a Class Member for a total of _____ workweeks during the period of February 13, 2011 to August 8, 2016 (“Class Period”).
- B. **Based on this number of workweeks, your estimated Individual Settlement Share is \$_____.** This amount may vary depending on the total weeks claimed by Class Members.
- C. **In order to receive your share of the settlement, you must sign and return this form to claim your portion of the settlement.**
- D. Only if you dispute the number of weeks worked as reflected above, please write the number you believe to be correct:

_____ weeks worked for Defendant in California as a Class Member during the Class Period.

Please attach copies (*not originals*) of any supporting documents (pay stubs, etc.) you have. The Claims Administrator may contact you for further information.

CLAIM FORM

RELEASED CLAIMS

As part of the Settlement, you will provide a full and complete release of all “Released Class Claims” against Defendant, its current or former subsidiaries, affiliates, owners, parents, predecessors, insurers, agents, employees, partners, successors, assigns, officers, officials, directors, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, and fiduciaries (“Releasees”).

“Released Class Claims” are defined as: any and all claims, rights, demands, charges, complaint, causes of action, obligations or liability of any and every kind that were alleged in any version of any complaint filed in the Action or in the Second Amended Complaint which occurred during the Settlement Period, and expressly excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, workers’ compensation, and claims outside the Settlement Period.

Release of FLSA Claims:

In addition to the claims enumerated above, by submitting this Claim Form, Qualified Claimants will also release and forever waive any and all claims they may have under the Fair Labor Standards Act (“FLSA”). This FLSA release only applies to claims through August 8, 2016, and does not apply to future claims or claims after August 8, 2016. You do not have to opt in to the FLSA Settlement. However, if you do not opt in by submitting this Claim Form, you will not receive a settlement payment and you will still release the Released Class Claims as set forth above.

TAXPAYER IDENTIFICATION NUMBER CERTIFICATION

Substitute IRS Form W-9

Enter the last four digits of your Social Security Number: XXX—XX—

I certify that:

1. The partial social security number shown on this form correctly states the last 4 digits of my taxpayer identification number, **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; **and**
3. I am a U.S. citizen or authorized to work in the United States of America.

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

I have not assigned any of my rights to any of the above Settlement Class Members' Released Claims.

I hereby confirm that the foregoing is true and correct.

FLSA OPT-IN

By signing below, I also hereby consent to join and opt-in to the FLSA Settlement. I further certify that I understand and agree that by signing this FLSA Opt-In, I am agreeing to the release of FLSA claims outlined in the Release of FLSA Claims above.

Dated: _____

Signature